that "a common bullet is formed entirely of lead," a statement now rarely true of modern projectiles.

Under the head of "Starvation," we find no reference to the case of Griscom, ably reported by Dr. Lester Curtis, of Chicago, which report is easily accessible in the *Proceedings of the American Society for the Advancement of Science.*

Under the head, "Evidence from Parental Likeness," we find no reference to Hanawalt *v.* the State, 64 Wis., 84, and other American cases on this subject.

The above and foregoing are only a few of the many sins of omission and commission to be found in the present volume. We think that from the above references, which can easily be verified, it is quite apparent that this edition has been very carelessly edited and that while valuable, (few books are wholly worthless) it is not nearly so valuable as it would have been if more ably and conscientiously edited.

The Kent Law School, MARSHALL D. EWELL, M. D.
Chicago, January 11, 1893.

FOSTER'S FEDERAL PRACTICE IN CIVIL CAUSES, with special reference to Patent Cases and the Foreclosure of Railway Mortgages. Second Edition. By ROGER FOSTER. 2 vols. Boston: The Boston Book Company, 1892.

We are glad to see that the profession by its appreciation of usefulness of FOSTER'S "Federal Practice" has exhausted the first edition, and thereby given the author an opportunity to enlarge and improve his work. As he says in his preface to the present edition: "Many of the original sections have been rewritten and new sections have been added to the original chapters, including all material statutes and decisions passed or reported before October Term of 1891, and many decisions since that date which have been added while the book was in the press." Things look differently in print than in manuscript, and it goes without saying that this careful revision of the whole work from the first edition has greatly added to its value. In fact, such a revision was rendered imperatively necessary by the passage of the Act creating the new Circuit Court of Appeals and radically changing the jurisdiction and practice affecting appeals and writs of error.

New chapters have also been added on "Practice in Admiralty," by CHARLES C. BURLINGHAM; "Practice in the Court of Private Land Claims," by ex-Judge E. A. BOWERS, and "Practice in the Court of Claims." These additions make the work practically complete, and every lawyer having business in Federal courts will find this second edition an indispensable requisite for his library.

THE LAW OF COLLATERAL ATTACK ON JUDICIAL PROCEEDINGS. By JOHN M. VANFLEET, Judge of the Thirty-fourth Judicial District of Indiana. Chicago: Callaghan & Company, 1892.

This work is one of the most welcome which we have received. The subject of collateral attack on judicial proceedings has heretofore been

wrapped in the obscurity of confused judicial reasoning and conflicting cases. We may say in truth that of all branches of the law there is none in a more chaotic condition. Those who doubt this statement have only to look at the above work to perceive that there is scarcely a question on which conflicting decisions by equally eminent tribunals, and we might add by equally learned judges, cannot be found. Upon this mass of conflicting material Judge VANFLEET has brought to bear a trained and analytical mind. In his preface he says that the work cost him six years of unremitting labor. We can well believe this statement. The book gives evidence on every page of careful and patient investigation, and we feel instinctively, as we read, though we may not agree with all his conclusions, that the writer is a sincere seeker for correct legal principles, and not a mere bookmaker.

The general plan and scope of the work may be gathered from the following summary:

A judgment involves the assumption that there was a regularly constituted Court, which legally obtained jurisdiction over the subject-matter and the person, and that the decree in the case was one which the Court had power to make. The question asked and answered in all collateral attacks on judgments or other judicial proceedings is, "Are these proceedings regular, and if not, what effect has the irregularity on the collateral force of the proceedings?"

The author commences by distinguishing collateral attack from *res judicata*, showing that the question involved in the latter is not, "Were the proceedings regular?" but, "granted that the proceedings were regular, what is the extent of the effect of the proceedings?" He then discusses in turn defects in the *constitution* of the Court, defects in the *process* by which jurisdiction was supposed to be obtained, defects in the subsequent proceedings which cause *a loss of jurisdiction*, and defects in the decree pronounced arising from *want of power* in the Court to make such decrees—either in the particular case before them, or in any case. Next he discusses the question of the effect of statutes ascribing specific effects to judicial proceedings when those proceedings are attacked collaterally; then shows the distinction between judicial and ministerial cases and the difference in the collateral effect of each; and then the legal presumptions when evidence is admitted *aliunde* in collateral proceedings to bar the effect of the record. The concluding chapter of the work treats of estoppel against contesting void proceedings.

This being the general division and plan of the work, its subdivision is peculiar. The author first states, explains and illustrates general principles applicable to questions discussed in succeeding chapters. The subjects in the succeeding chapters are then treated in alphabetical order, and the confusion of the decisions pointed out. Thus, Chapters II and III deal with the effects, when attacked collaterally, of the infirmities in the tribunal. Chapter II deals with the constitutional infirmities in the organization of the tribunal. This again is divided into two parts: Part One treating of the corporate organization of the tribunal, and Part Two dealing with the judge—his constitutional infirmities. Two subjects are treated under Part One—first, when the government is unconstitutional or revolutionary, and, second, when the tribunal has not been lawfully

organized under the State Constitution. These two subjects, since they do not logically necessarily come one before the other, are treated in alphabetical order. We may say that, in general, the alphabetical order is maintained wherever the logical arrangement of the book is not interfered with.

In order that our readers may perceive the general point of view from which Judge VANFLEET has discussed the numerous complicated and controverted questions which have arisen in the domain of Collateral Attack, we may take the "Infirmities in the Organization of the Court" as an example.

No one would contend for an instant that a Court which has no color of authority to exist, which was simply an arbitrary and self-willed creation of its judges, and which was never recognized as a Court, could institute proceedings which had any binding effect collaterally. On the other hand, courts which are not courts under the strict interpretation of the law, or which are courts of revolutionary governments, whose authority, while transitory, is for a while recognized, are courts at least with a colorable authority. Decided cases have attempted, in many instances, to draw the line where infirmities in the organization of the tribunal would or would not render their proceeding liable to collateral attack. Judge VANFLEET takes the ground that any color of authority, however slight or dubious, by which the court exists, shields its proceedings from collateral attack.

He thus condemns, and we think rightly, those decisions which draw a distinction between constitutional infirmities in the organization of the tribunal, and mere statutory infirmities. There is no reason why the proceedings of a tribunal which exists contrary to the Constitution of the State should be any the less valid and secured against collateral attack than the proceedings of a tribunal which is illegal according to the laws of the State enacted by its legislature. Following out the same idea, he considers that mere constitutional or with legal infirmities in the judge who presided over the tribunal should not render the proceedings before him void collaterally, and he does not hesitate to condemn all those cases which hold otherwise. In discussing the numerous cases which arise out of the question whether jurisdiction has been properly obtained or exercised, we find our author exhibiting the same desire to invaribly support the validity of judicial proceedings. A court, we are told, is the sole and only judge of its own jurisdiction. Before any action can be taken in the case, there is first the implied assumption that there is jurisdiction to do the act. The jurisdiction may be attacked directly on appeal by parties involved, but in collateral proceedings the decision as to jurisdiction is conclusive.

This principle leads the author to condemn a vast number of cases, both in this country and in England, which have attempted to draw the distinction between jurisdictional facts found, and non-jurisdictional facts; that is to say, the opinion that a judgment can be attacked collaterally, if the fact found to enable the court to take jurisdiction was not necessarily involved in deciding the case, a distinction which we think Judge VANFLEET rightly considers as a mere invention of the imagination. In accordance with his general views, on page 103, he criticises the

decision of the Supreme Court in the now great case of *Ex parte* Siebold.[1] This case, and numerous others which recognize the same principle, established the rule that where a conviction has been had under an unconstitutional statute (no complaint as to the constitutionality of the statute having been made at the time of the trial), a habeas corpus can, after sentence, be taken to an appellate tribunal, and the prisoner discharged. This case is criticised on the ground that a prisoner, like the defendant in a civil action, had the right, during the time of the proceedings against him, to set up any valid ground of defense, and that his failure to do so should forever conclude him from attacking the proceedings collaterally, because of the principle that, after verdict, it is to be supposed that the defendant has set up all possible grounds for defense, and that these have been passed upon; and, moreover, that there has been an opportunity for an appeal which he has not availed himself of. It seems to us that this opinion illustrates what is the principal flaw in Judge VANFLEET'S method of attacking legal questions, which is first to lay down a broad and general principle, and then to apply it to every case which arises. It may be, as we undoubtedly think it is, that to allow a defendant in a civil suit to attack collaterally proceedings after he has had his day in Court, is to cast a doubt on all judicial acts. But it seems to us to be a very different thing to assert that a person who has been tried, perhaps for his life, and who has failed to point out to the Court the irregularity of the proceedings against him, shall be hung or allowed to languish in prison because a superior tribunal ought not to entertain a habeas corpus, even though it would be impossible for the prisoner to attack the proceedings directly.

Another class of cases, in which we think that the author has, perhaps, pushed a general principle to extremes, is to be found on page 368, where he discusses those cases in which boards of assessment are required to give specific notice in a definite way to individuals that an assessment of property is to be made, and afterward a suit is brought to enforce the assessment. The opinion of our author is that the defendant cannot show that he had no notice of the proceedings in assessment, because no publication of the intended proceedings against him had been made as required. Judge VANFLEET says, in speaking of a particular case: "The law, which Mr. Kuntz was bound to know, fixed the time and place to have certain rights between him and the State adjudicated, and it seems to me that nothing more was necessary." But the law not only fixed the time at which the board should meet, but also fixed a certain specific method by which the defendant was to have notice that on a particular day the rights between him and the State would be adjudicated. He was entitled by law to that notice. If he did not have the notice, how could he appear, and if he did not appear, how could he make any direct attack on the proceedings against him? The first notice which he might have had of the fact that certain rights between him and the State had been adjudicated by the suit for the assessment which he was not called upon to defend, might be the demand for the tax. At this stage of the proceedings it may be a serious question, the determination of which must depend upon the particular laws of the State, whether he then had the right to attack the proceedings directly; and, if he had no such right, it

[1] 100 U. S., 371.

would be but scant justice to hold that one who had no notice of the proceedings against him until after the expiration of the time for the direct attack on those proceedings, was without the right to attack them collaterally. It seems to us, therefore, where there has been such a defect in service of the writ or notice of proceedings that the defendant has no notice of these proceedings until the time for direct attack has passed, that then he should be permitted to attack the proceedings collaterally. Whether this would be the opinion of the author as to this particular case we are unable to say with confidence, because the discussion of principles is almost exclusively confined to the opening chapters of the work, and the subsequent chapters are simply used as digests to show the cases which have followed the principle and those which have not. In those which do not, apparently, follow the main principle laid down, the reader is sometimes at a loss to know whether the author approves of the exception made by the case, or whether he simply gives the case as an illustration of an erroneous conclusion. In fact, the method of confining the discussion of principles to one place and giving the decided cases in another, seems to us to be adapted only to those subjects where the author is prepared to admit no exception or modification to the universal application of the principle.

That Judge VANFLEET considers that there are no exceptions to the principle which he has laid down in Sections 60 and 67 concerning what it is that confers jurisdiction and the power to adjudicate in respect to it, and in Section 329, in regard to the sufficiency of process and service to shield the proceedings, is evident, not only from his preface, but from the arrangement of the work. For our own part, while not attempting to criticize any except the two cases above mentioned, we cannot but wish that Judge VANFLEET, by discussing critically the possible exceptions as illustrated by the decisions in his text, had answered a number of those doubts which naturally arise in the mind of the reader as he reads the particular facts of those cases which the author has given, without a note, as illustrating the wrong application of a general principle.

But even if these criticisms on the arrangement of the work are valid, the reader will find that the matters objected to will detract but little from the real merits of the work. Every one who reads it will find in it a key to much in the law of collateral attack on judicial proceedings which has hitherto been confused and confusing; and those who have a fondness for clear thinking (and of such let us hope there are many at the American bar), will welcome this book, evincing, as it does, patient investigation and ripe scholarship, as a most valuable addition to American legal literature. W. D. L.

A TREATISE ON THE LAW OF STREET RAILWAYS. By HENRY J. BOOTH. Philadelphia: T. &. J. W. Johnson & Co, 1892.

Mr. BOOTH in this volume has given the profession a very useful book. It is a matter of note that no one has heretofore thought of treating street railways in a separate work. Surely these companies have, on account of the peculiar nature of their franchises, such unique relations to the State, to the public and to the persons whose property they affect, as abutting owners, that there is ample room for a separate